IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.96 OF 1997

The Commissioner of Income Tax
Nashik .. Applicant.
V/s.
Gangapur S.S.K. Ltd. Aurangabad .. Respondent.

Mr.A.S. Rao with Mr.Pankaj Kapoor for the applicant.

Mr.S.N. Inamdar with Mr.P. Vaidya for the respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 19TH APRIL, 2005.

P.C. :

1. Heard the learned counsel for the parties. The Tribunal has referred following questions for the opinion of this Court, reading as under :

> Whether on the facts and in the circumstances of the case, the ITAT was justified in deleting the following addition relying on the decision of the Special Bench of the ITAT, Pune in the case of Shri Chhatrapati Sah. Sakhar Karkhana Ltd., 198 ITR 78 - AT, and holding that the various funds / non-refundable deposits, collected during the course of trading operations, are not trading receipts of the assessee as held by the Supreme Court in the case of Bazpur Co-op. Sugar Mills Ltd. 172 ITR 321 ?
>
> | | |
> |---|---|
> | 1. Non-refundable deposits | Rs.14,61,278 |
> | 2. Cane development fund | Rs. 5,09,462 |
> | 3. C.M. Fund | Rs. 63,687 |
> | 4. Hutment fund | Rs. 63,687 |

2. In so far as all other items except cane development fund is concerned, the issue is covered

by the decision of the Apex Court in the case of **Siddheshwar S.S.K. Ltd. V/s. CIT [(2004) 270 ITR 1 (SC)]** in favour of the assessee and against the revenue. So far as cane development fund is concerned, the issue will have to be referred back to the Tribunal for consideration afresh as per the judgment of the Apex Court in the case of Siddheshwar S.S.K. Ltd. (supra). As such the said issue stands remanded back to the Tribunal for consideration afresh.

3. The reference is disposed of in the above terms with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)